

EXHIBIT 1

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Anthony Williams

(b) County of Residence of First Listed Plaintiff Maricopa

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Palumbo Wolfe & Palumbo, P.C.

Scott I. Palumbo (AZ Bar No. 021271); (602) 265-5777

2800 N. Central Ave., Suite 1400; Phoenix, AZ 85004

DEFENDANTS

Pacific Sunwear of California, LLC

County of Residence of First Listed Defendant Los Angeles

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Bergin, Frakes, Smalley & Oberholtzer, PLLC

Brian Bergin (AZ Bar No. 016375); (602) 888-7855

4343 East Camelback Road, Suite 210; Phoenix, AZ 85018

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|---|---|---|---|---|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | | | |

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1453(b)

Brief description of cause:

Pixel trackers in emails are alleged to violate plaintiff's privacy by extracting "communication service records"

VII. REQUESTED IN COMPLAINT:☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

08/09/2024

SIGNATURE OF ATTORNEY OF RECORD

/s/ Brian Bergin

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

EXHIBIT 2

**SUPPLEMENTAL CIVIL COVER SHEET
FOR CASES REMOVED FROM ANOTHER JURISDICTION**

This form must be attached to the Civil Cover Sheet at the time
the case is filed in the United States District Clerk's Office

Additional sheets may be used as necessary.

1. Style of the Case:

Please include all Plaintiff(s), Defendant(s), Intervenor(s), Counterclaimant(s), Crossclaimant(s) and Third Party Claimant(s) still remaining in the case and indicate their party type. Also, please list the attorney(s) of record for each party named and include their bar number, firm name, correct mailing address, and phone number (including area code).

| <u>Party</u> | <u>Party Type</u> | <u>Attorney(s)</u> |
|------------------------------------|-------------------|--|
| Anthony Williams | Plaintiff | Scott I. Palumbo (AZ Bar No. 021271) Palumbo Wolfe & Palumbo P.C. 2800 N. Central Ave., Suite 1400, Phoenix, AZ Tel: (602) 265-5777 (Continued below) |
| | | Myles McGuire (IL Bar No. 6287946) Eugene Y. Turin (IL Bar No. 6317282) Jordan R. Frysinger (IL Bar No. 6335897) McGuire Law, P.C. 55 W. Wacker Dr., 9th Fl. Chicago, IL 60601 Tel: (312) 893-7002 |
| Pacific Sunwear of California, LLC | Defendant | Bergin, Frakes, Smalley & Oberholtzer, PLLC Brian Bergin (AZ Bar No. 016375) 4343 East Camelback Road, Suite 210 Phoenix, Arizona 85018 Tel: (602) 888-7855 |

2. Jury Demand:

Was a Jury Demand made in another jurisdiction? Yes ☒ No ☐

If "Yes," by which party and on what date?

Plaintiff

07/01/2024

3. Answer:

Was an Answer made in another jurisdiction? Yes ☐ No ☒

If "Yes," by which party and on what date?

4. Served Parties:

The following parties have been served at the time this case was removed:

| <u>Party</u> | <u>Date Served</u> | <u>Method of Service</u> |
|------------------------------------|--------------------|--------------------------------------|
| Pacific Sunwear of California, LLC | July 11, 2024 | Personal service on registered agent |
| | | |
| | | |

5. Unserved Parties:

The following parties have not been served at the time this case was removed:

| <u>Party</u> | <u>Reason Not Served</u> |
|--------------|--------------------------|
| N/A | N/A |
| | |
| | |

6. Nonsuited, Dismissed or Terminated Parties:

Please indicate changes from the style of the papers from another jurisdiction and the reason for the change:

| <u>Party</u> | <u>Reason for Change</u> |
|--------------|--------------------------|
| N/A | N/A |
| | |
| | |

7. Claims of the Parties:

The filing party submits the following summary of the remaining claims of each party in this litigation:

| <u>Party</u> | <u>Claims</u> |
|--------------|--|
| Plaintiff | Alleges violations of Arizona's Telephone, Utility and Communication Service Records Act based on Defendant's use of email trackers. |
| | |
| | |

Pursuant to 28 USC § 1446(a) a copy of all process, pleadings, and orders served in another jurisdiction (State Court) shall be filed with this removal.

EXHIBIT 3

« Return to search results

Case Information

| | | | |
|--------------|---------------|-----------|----------------------|
| Case Number: | CV2024-017119 | Judge: | Whitten, Christopher |
| File Date: | 7/1/2024 | Location: | Downtown |
| Case Type: | Civil | | |

Party Information

| Party Name | Relationship | Sex | Attorney |
|-------------------------------------|--------------|------|---------------|
| Anthony Williams | Plaintiff | Male | Scott Palumbo |
| Pacific Sunwear Of California L L C | Defendant | | Pro Per |

Case Documents

| Filing Date | Description | Docket Date | Filing Party |
|-------------------|---|-------------|--------------|
| 7/18/2024 | AFS - Affidavit Of Service | 7/18/2024 | |
| NOTE: 7/1/2024 | Affidavit of Service | | |
| NOTE: 7/1/2024 | COM - Complaint | 7/2/2024 | |
| NOTE: 7/1/2024 | Class Action Complaint | | |
| NOTE: 7/1/2024 | CSH - Coversheet | 7/2/2024 | |
| NOTE: 7/1/2024 | Civil Cover Sheet | | |
| NOTE: 7/1/2024 | CCN - Cert Arbitration - Not Subject | 7/2/2024 | |
| NOTE: 7/1/2024 | Certificate Of Compulsory Arbitration - Is Not Subject To | | |
| NOTE: 7/1/2024 | SUM - Summons | 7/2/2024 | |
| NOTE: | Summons | | |

Case Calendar

There are no calendar events on file

Judgments

| Date | (F)or / (A)gainst | Amount | Frequency | Type | Status |
|-------------------|-------------------|--------|-----------|------|--------|
| No records found. | | | | | |

EXHIBIT 4

1 Scott I. Palumbo - State Bar #021271
2 PALUMBO WOLFE & PALUMBO, P.C.
3 2800 North Central Avenue, Suite 1400
4 Phoenix, Arizona 85004
5 (602) 265-5777
6 (602) 265-7222 (fax)
7 pwsp@palumbowolfe.com

8 Myles McGuire (Illinois Bar No. 6287946)
9 Eugene Y. Turin (Illinois Bar No. 6317282)
10 Jordan R. Frysinger (Illinois Bar No. 6335897)
11 McGUIRE LAW, P.C.
12 55 W. Wacker Dr., 9th Fl.
13 Chicago, Illinois 60601
14 Tel: (312) 893-7002
15 Fax: (312) 275-7895
16 mmcguire@mcgpc.com
17 eturin@mcgpc.com
18 jfrysinger@mcgpc.com

19 Attorneys for Plaintiff – Pro Hac Vice

20 **Pro Hac Vice Application to Be Submitted*

21 Attorneys for Plaintiff

22 **SUPERIOR COURT OF ARIZONA**
23 **MARICOPA COUNTY**

24 ANTHONY WILLIAMS, individually and on
25 behalf of similarly situated individuals,

26 Plaintiff,

27 v.

28 PACIFIC SUNWEAR OF CALIFORNIA, LLC., a
California limited liability company,

Defendant.

CV2024-017119

No.:

CLASS ACTION COMPLAINT

CLASS ACTION COMPLAINT

Plaintiff Anthony Williams (“Plaintiff”) brings this Class Action Complaint against Defendant Pacific Sunwear of California, LLC. (“PacSun” or “Defendant”) for violations of Arizona’s Telephone, Utility and Communication Service Records Act (A.R.S. § 44-1376 *et seq.*). Plaintiff alleges as follows based on personal knowledge as to himself and his own acts and experiences and as to all other matters, on information and belief, including an investigation by his attorneys.

NATURE OF THE CASE

1. Defendant is one of the nation's largest retailers, boasting \$900m in revenue as of 2022.¹

2. In order to increase its marketing efforts, Defendant sends massive amounts of marketing emails to its consumers to entice them to purchase its products. However, Defendant embeds hidden spy pixel trackers within its emails which capture sensitive information, including the time and place where Plaintiff and other Arizona residents opened the email and what contents they clicked on. Such spy pixels help Defendant monitor Plaintiff and other Arizona residents' behavior by collecting and storing the above tracking data to build a detailed profile of the email recipients' interests.

3. Arizona's Telephone, Utility and Communication Service Records Act prohibits a person from knowingly obtaining a "communication service record" of any Arizona resident i) without the authorization of the person to whom the record pertains, or ii) by fraudulent, deceptive

¹ <https://wwd.com/fashion-news/fashion-features/pacsun-900-million-sales-partnerships-digital-1235154525/>

1 or false means. A.R.S. § 44-1376.01(A)(1).

2 4. Plaintiff and the Class members are recipients of Defendant's emails that utilize spy
3 pixels to obtain, record and collect whether and when the email recipients open and read emails
4 from PacSun, where they open it, how long they looked at it, whether they forwarded it, and how
5 to best target recipients with future emails.
6

7 5. Importantly, Defendant never received Plaintiff's or the Class Members' lawful
8 valid consent to collect, obtain and use this information.
9

10 6. By failing to receive lawful valid consent from Plaintiff and the Class Members,
11 Defendant violated Arizona's Telephone, Utility and Communication Service Records Act.
12

13 JURISDICTION AND VENUE

14 7. This Court has subject matter jurisdiction over this matter pursuant to A.R.S § 12-
15 123.
16

17 8. This Court may assert personal jurisdiction over Defendant in accordance with the
18 Arizona Constitution and the Constitution of the United States, because Defendant knowingly
19 conducts business in Arizona such that it has sufficient minimum contacts with Arizona and has
20 purposefully availed itself of Arizona markets to make it reasonable for this Court to exercise
21 jurisdiction over Defendant, and because Plaintiff's claims arise out of Defendant's unlawful in-
22 state actions, as Defendant violated the privacy rights of Plaintiff and other Class members in this
23 State
24
25

26 9. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401(1) as Plaintiff
27 resides within this county.
28

PARTIES

10. Plaintiff is a resident within the State of Arizona.

11. Defendant Pacific Sunwear of California, LLC is a California limited liability company with its principal place of business located in Anaheim, CA.

COMMON FACTUAL ALLEGATIONS

I. Email Spy Pixels

12. Despite Arizona law prohibiting the practice, companies embed trackers within emails without first obtaining consent. Indeed, “[a] 2018 Princeton study on email tracking tested over 12,000 emails from 900 senders offering mailing list subscriptions and found that 70% contained trackers.”²

13. Such email trackers are known as “spy pixels.”

14. An email spy pixel is a tiny graphic used to measure various metrics while gathering information about email recipients.

15. The objective of a spy pixel is to collect email engagement information without the knowledge of the recipient of the email.

16. Such information collected without the knowledge of the recipient includes: if and when an email is opened and read, when (and how many times) it is read, the IP address and other unique identity details of the computer or smartphone used to read the email, and from the latter, the geographical location of the recipient.

17. Spy pixels are activated simply by the recipient opening an email in which it is

² <https://www.forbes.com/sites/forbestechcouncil/2022/06/09/the-business-ofemail-tracking-what-to-know->

1 contained.

2 **II. Defendant's Spy Pixel Tracking**

3
4 18. Defendant embeds spy pixels in its marketing emails and uses such pixels to procure
5 the above-mentioned engagement data from the email's recipients.

6 19. Defendant's emails contain unique spy pixel URLs – personalized tokens – for each
7 email it sends so Defendant can link the data collected via its spy pixels with the specific identity
8 of the recipient.
9

10 20. Defendant's embedded spy pixel in its marketing emails sent to Plaintiff and other
11 members of the Class track, among other things, the time and place where emails were opened.
12

13 21. Plaintiff and other members of the Class were unaware that tracking pixels were
14 embedded in the emails sent to them by Defendant.
15

16 22. Defendant never received lawful and valid consent from Plaintiff and the members
17 of the Class to use the aforementioned spy pixels to collect sensitive information from their
18 interactions with its emails.
19

20 **FACTS SPECIFIC TO PLAINTIFF**

21 23. Plaintiff Anthony Williams has frequently received and opened marketing emails
22 from Defendant to review promotional materials.
23

24 24. Plaintiff most recently opened one of Defendant's emails within the past few
25 months.

26 25. Each time Plaintiff opened one of Defendant's emails, Defendant procured
27 information identifying him and collected sensitive information, including when he opened and
28

1 read the email through Defendant's spy pixels embedded in the emails he received.

2 26. Specifically, live-data tracking analysis demonstrates that several spy pixels are
3 embedded in Defendant's emails to track and collect Plaintiff's interactions with the email. Such
4 pixels are embedded in the images of the email, which are stored on a server and referenced in a
5 URL. These URLs contain a Global Universal Identifier (GUID) which can show when a user
6 opened an email and what links they clicked, and further track the user through the website once
7 directed there from the email.
8

9 27. Defendant embeds multiple spy pixels with GUIDs in its emails linked to Plaintiff's
10 identifying information so that Defendant can track when Plaintiff opened the email and to track
11 his interactions with the email to build a detailed profile on his interests.
12

13 28. However, Defendant never received lawful and valid consent from Plaintiff to
14 procure and obtain his private email records or the information Defendant's email spy pixels
15 obtained.
16

17 29. Plaintiff was unaware that spy pixels were embedded in the emails as Defendant
18 does not inform users it embeds tracking pixels in its marketing emails.
19

20 30. As a result, Defendant has violated Arizona's Telephone, Utility and
21 Communications Service Records Act, A.R.S. § 44-1376 *et seq.*
22

23 **CLASS ALLEGATIONS**

24 31. Plaintiff brings this action on his own behalf and on behalf of a class (the "Class")
25 pursuant to Arizona Rules of Civil Procedure Rule 23. Plaintiff seeks to represent a Class defined
26 as follows:
27
28

1 Class: All persons within Arizona who have opened a marketing email containing a
2 tracking pixel from Defendant within the relevant statute of limitations.

3 32. Excluded from the Class are any members of the judiciary assigned to preside over
4 this matter; any officer or director of Defendant; and any immediate family member of such
5 officers or directors.
6

7 33. Upon information and belief, there are thousands of members of the Class, making
8 the members of the Class so numerous that joinder of all members is impracticable. Although the
9 exact number of members of the Class is currently unknown to Plaintiff, the members can be
10 easily identified through Defendant's records.
11

12 34. Plaintiff's claims are typical of the claims of the members of the Class Plaintiff
13 seeks to represent, because the factual and legal bases of Defendant's liability to Plaintiff and the
14 other members are the same, and because Defendant's conduct has resulted in similar injuries to
15 Plaintiff and to the Class. As alleged herein, Plaintiff and the Class have all suffered damages as
16 a result of Defendant's violations of A.R.S. § 44-1376.01.
17

18 35. There are many questions of law and fact common to the claims of Plaintiff and the
19 other Class Members, and those questions predominate over any questions that may affect
20 individual members of the Class. Common questions for the Class include, but are not limited to,
21 the following:
22

- 23 (a) Whether Defendant "[k]nowingly procure[d], attempt[ed] to procure, solicit[ed] or
24
25
26
27
28
conspire[d] with another to procure . . . a communication service record of any
resident of this state without the authorization of the customer to whom the record

1 pertains or by fraudulent, deceptive or false means”;

2 (b) Whether Plaintiff’s and the Class’s “communication service records” were
3 procured, sold or received in violation of A.R.S. § 44-1376 *et seq.*;

4 (c) Whether Defendant’s conduct violates A.R.S. § 44-1376 *et seq.* or any other
5 applicable laws; and

6 (d) Whether, as a result of Defendant’s misconduct, Plaintiff and the other Class
7 Members are entitled to restitution, injunctive, and/or monetary relief.
8

9
10 36. Absent a class action, most members of the Class would find the cost of litigating
11 their claims to be prohibitively expensive and would thus have no effective remedy. The class
12 treatment of common questions of law and fact is superior to multiple individual actions in that it
13 conserves the resources of the courts and the litigants and promotes consistency of adjudication.
14

15 37. Plaintiff will adequately represent and protect the interests of the members of the
16 Class. Plaintiff has retained counsel with substantial experience in prosecuting complex litigation
17 and class actions. Plaintiff and Plaintiff’s counsel are committed to vigorously prosecuting this
18 action on behalf of the other members of the Class and have the financial resources to do so.
19 Neither Plaintiff nor Plaintiff’s counsel have any interest adverse to those of the other members
20 of the Class.
21

22
23 38. Defendant has acted and failed to act on grounds generally applicable to Plaintiff
24 and the other members of the Class, requiring the Court’s imposition of uniform relief to ensure
25 compatible standards of conduct toward the members of the Class and making injunctive or
26 corresponding declaratory relief appropriate for the Class as a whole.
27
28

COUNT ONE

**Violations of A.R.S. § 44-1376.01
(On behalf of Plaintiff and the Class)**

39. Plaintiff hereby incorporates the above allegations by reference as though fully set forth herein.

40. Defendant embeds spy pixels in its marketing emails sent to Plaintiff and Class Members.

41. The spy pixels are designed to extract “communication service records” related to the delivery of the email the spy pixel is embedded in. This includes, but is not limited to, time logs of email access, logs of associated email addresses, logs of email client type, logs of email path data, logs of recipient location, logs of IP address, logs of email forwarding data, and logs of device information including specifically tracking when a recipient opened an email, what links they clicked and then tracking the user through the website once directed there from the email.

42. Defendant “procures” Plaintiff’s and Class Members’ “communication service records” because they “obtain by any means, including electronically” Plaintiff’s and Class Members’ “communication service records” as defined in A.R.S. § 44-1376.

43. In contravention of A.R.S. § 44-1376.01, Defendant knowingly procures “subscriber information, including logs, records of the path of an electronic communication between the point of origin and the point of delivery and the nature of the communication service provided, such as . . . electronic mail . . .,” which constitute “communication service records” under A.R.S. § 44-1376, from Plaintiff and Class Members.

44. Defendant acted deceptively because Plaintiff and Class Members were never informed by Defendant, and thus never knew, that Defendant would be procuring sensitive

1 information such as time logs of email access, associated email addresses, email client type, email
2 path data, IP addresses, device information, and specifically, when a they opened an email, what
3 links they clicked and then information tracking the user through the website once directed there
4 from the email.
5

6 45. Plaintiff and Class Members never gave lawful consent to Defendant to procure the
7 communication service records.
8

9 46. Each time Defendant sent an email containing a spy pixel, Defendant procured a
10 communication service record, thus committing a separate violation of A.R.S. § 44-1376.01.
11

12 47. Defendant invaded Plaintiff's and Class Members' right to privacy by its invasive
13 spy pixel tracking of Plaintiff's and Class Members' sensitive email engagement information
14 including when they opened and read an email. That conduct also intruded upon their seclusion.
15

16 48. Accordingly, Plaintiff and Class Members pray for the relief set forth by statute,
17 including actual damages, profits made by Defendant as a result of its violations, \$1,000 for each
18 violation, reasonable attorneys' fees and other litigation costs reasonably incurred, and such other
19 equitable relief as the court determines to be appropriate.
20

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff, on behalf of himself and the Class, prays for the following relief:
23

- 24 1. An order certifying the Class as defined above;
- 25 2. For all forms of relief set forth above
- 26 3. An order enjoining Defendant from continuing to engage in the unlawful conduct
27 and practices described herein;
28

4. An award of attorney's fees and costs; and
5. Award such further relief as the Court deems reasonable and just.

JURY DEMAND

Plaintiff requests trial by jury of all claims that can be so tried.


DATED this 1st day of July, 2024.

McGUIRE LAW, P.C.

and

PALUMBO WOLFE & PALUMBO, P.C.

By



Scott I. Palumbo
2800 North Central Avenue, Suite 1400
Phoenix, Arizona 85004
Attorneys for Plaintiff and the Putative Class

ORIGINAL of the foregoing filed
this 1st day of July, 2024, with:

Clerk of the Superior Court
Maricopa County Superior Court
201 W. Jefferson St.
Phoenix, Arizona 85003

By

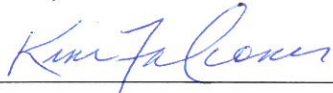


EXHIBIT 5

Palumbo Wolfe & Palumbo PC
2800 N. Central Ave., Suite 1400
Phoenix, AZ 85004
(602) 265-5777

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

Anthony Williams

Plaintiff,

Case Number: CV2024-017119

AFFIDAVIT OF SERVICE

vs.

Pacific Sunwear of California, LLC

Defendant.

Received by GSI to be served on **Pacific Sunwear Of California, LLC, 330 N. Brand Blvd., #700, Glendale, CA 91203.**

I, John Abramyan, being duly sworn, depose and say that on the **11th day of July, 2024 at 10:51 am, I:**

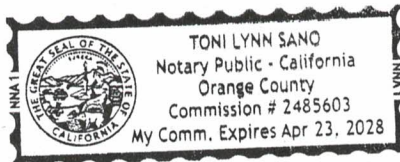
served a **CORPORATION** by delivering a true copy of the **Summons and Complaint; Certificate of Compulsory Arbitration** with the date and hour of service endorsed thereon by me, to: **Jessie Gastelum as Intake Specialist For CT Corp, Agent for Pacific Sunwear Of California, LLC**, at the address of: **330 N. Brand Blvd., #700, Glendale, CA 91203**, and informed said person of the contents therein, in compliance with state statutes.

Description of Person Served: Age: 35, Sex: F, Race/Skin Color: Hisp, Height: 5'5", Weight: 150, Hair: Brown, Glasses: N

I certify that I am over the age of 18, have no interest in the above action, and am a Certified Process Server, in good standing, in the judicial circuit in which the process was served.

Subscribed and Sworn to before me on the 17
day of July, 2024 by the affiant
who is personally known to me.

NOTARY PUBLIC




John Abramyan
6898

GSI
360 E. 1st St., Suite 773
Tustin, CA 92780
(714) 788-4860

Our Job Serial Number: GSI-2024006572
Ref: Williams v Pacific Sunwear of California
Service Fee: \$90.00

EXHIBIT 6

**In the Superior Court of the State of Arizona
In and For the County of Maricopa**

Clerk of the Superior Court
*** Electronically Filed ***
Y. Moralez, Deputy
7/1/2024 1:28:34 PM
Filing ID 18080277

Plaintiff's Attorneys:

Scott I Palumbo - Primary Attorney
Bar Number: 021271, issuing State: AZ
Law Firm: Palumbo Wolfe
2800 N. Central Ave. Suite 1400
Phoenix, AZ 85004
Telephone Number: (602)265-5777
Email address: spalumbo@palumbowolfe.com

CV2024-017119

Myles McGuire
Bar Number: 6287946, issuing State: IL
Law Firm: McGUIRE LAW, P.C.
Telephone Number: (312)893-7002

Eugene Y Turin
Bar Number: 6317282, issuing State: IL
Law Firm: McGUIRE LAW, P.C.
Telephone Number: (312)893-7002

Jordan R Frysinger
Bar Number: 6335897, issuing State: IL
Law Firm: McGUIRE LAW, P.C.
Telephone Number: (312)893-7002

Plaintiff:

ANTHONY WILLIAMS

Defendant:

PACIFIC SUNWEAR OF CALIFORNIA, LLC
3450 E. Miraloma Avenue
Anaheim, CA 92806

Discovery Tier t3

Case Category: Other Civil Case Categories
Case Subcategory: Violation AZ Communication Act

Person Filing: Scott I Palumbo

Address (if not protected): 2800 N. Central Ave. Suite 1400

City, State, Zip Code: Phoenix, AZ 85004

Telephone: (602)265-5777

Email Address: spalumbo@palumbowolfe.com

Representing ☐ Self or ☒ Attorney for:

Lawyer's Bar Number: 021271, Issuing State: AZ

Clerk of the Superior Court
 *** Electronically Filed ***
 Y. Moralez, Deputy
 7/1/2024 1:28:34 PM
 Filing ID 18080279

**SUPERIOR COURT OF ARIZONA
 IN MARICOPA COUNTY**

Case Number: **CV2024-017119**ANTHONY WILLIAMS

Name of Plaintiff

SUMMONS

AND

PACIFIC SUNWEAR OF CALIFORNIA, LLC

Name of Defendant

WARNING: This is an official document from the court that affects your rights. Read this carefully.
 If you do not understand it, contact a lawyer for help.

FROM THE STATE OF ARIZONA TO: PACIFIC SUNWEAR OF CALIFORNIA, LLC

Name of Defendant

1. **A lawsuit has been filed against you.** A copy of the lawsuit and other court papers are served on you with this “*Summons*”.
2. If you do not want a judgment or order taken against you without your input, you must file an “*Answer*” or a “*Response*” in writing with the court and pay the filing fee. If you do not file an “*Answer*” or “*Response*” the other party may be given the relief requested in his/her Petition or Complaint. To file your “*Answer*” or “*Response*” take, or send, the “*Answer*” or “*Response*” to Clerk of the Superior Court, or electronically file your Answer through one of Arizona’s approved electronic filing systems at <http://www.azcourts.gov/efilinginformation>. Mail a copy of your “*Response*” or “*Answer*” to the other party at the address listed on the top of this Summons. Note: If you do not file electronically you will not have electronic access to the document in this case.

3. If this “Summons” and the other court papers were served on you by a registered process server or the Sheriff, within the State of Arizona, your “Response” or “Answer” must be filed within TWENTY (20) CALENDAR DAYS from the date you were served, not counting the day you were served. If this “Summons” and the other papers were served on you by a registered process server or the Sheriff outside the State of Arizona, your Response must be filed within THIRTY (30) CALENDAR DAYS from the date you were served, not counting the day you were served. Service by a registered process server or the Sheriff is complete when made. Service by Publication is complete thirty (30) days after the date of the first publication.
4. You can get a copy of the court papers filed in this case from the Petitioner at the address at the top of this paper, or from the Clerk of the Superior Court.
5. Requests for reasonable accommodation for persons with disabilities must be made to the office of the judge or commissioner assigned to the case, at least ten (10) judicial days before your scheduled court date.
6. Requests for an interpreter for persons with limited English proficiency must be made to the office of the judge or commissioner assigned to the case at least ten (10) judicial days in advance of your scheduled court date.

SIGNED AND SEALED this Date: *July 01, 2024*

JEFF FINE
Clerk of Superior Court

By: *Y. MORALES*
Deputy Clerk



Requests for an interpreter for persons with limited English proficiency must be made to the division assigned to the case by the party needing the interpreter and/or translator or his/her counsel at least ten (10) judicial days in advance of a scheduled court proceeding.

If you would like legal advice from a lawyer, contact Lawyer Referral Service at 602-257-4434 or <https://maricopabar.org>. Sponsored by the Maricopa County Bar Association.

Person/Attorney Filing: Scott I Palumbo
Mailing Address: 2800 N. Central Ave. Suite 1400
City, State, Zip Code: Phoenix, AZ 85004
Phone Number: (602)265-5777
E-Mail Address: spalumbo@palumbowolfe.com
[☐] Representing Self, Without an Attorney
(If Attorney) State Bar Number: 021271, Issuing State: AZ

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

ANTHONY WILLIAMS

Plaintiff(s),

v.

PACIFIC SUNWEAR OF CALIFORNIA, LLC

Defendant(s).

Case No. **CV2024-017119**

**CERTIFICATE OF
COMPULSORY ARBITRATION**

I certify that I am aware of the dollar limits and any other limitations set forth by the Local Rules of Practice for the Maricopa County Superior Court, and I further certify that this case IS NOT subject to compulsory arbitration, as provided by Rules 72 through 77 of the Arizona Rules of Civil Procedure.

RESPECTFULLY SUBMITTED this July 01, 2024

By: Scott I Palumbo /s/
Plaintiff/Attorney for Plaintiff

EXHIBIT 7

LR Civ 3.6(b)(10) Verification of Brian M. Bergin

1. I, Brian M. Bergin, am counsel for Pacific Sunwear of California, LLC, the removing party herein.
2. I hereby verify that true and complete copies of all pleadings and other documents filed in Maricopa County Superior Court proceeding CV2024-017119 have been submitted with this Notice of Removal.
3. I verify under penalty of perjury that the foregoing is true and correct.

Executed on August 9, 2024.

/s/ Brian M. Bergin

Brian M. Bergin

EXHIBIT 8



STATE OF CALIFORNIA
Office of the Secretary of State
STATEMENT OF INFORMATION
LIMITED LIABILITY COMPANY

California Secretary of State
1500 11th Street
Sacramento, California 95814
(916) 657-5448

For Office Use Only

-FILED-

File No.: BA20241362468

Date Filed: 7/25/2024

B2914-4282 07/25/2024 9:49 AM Received by California Secretary of State

| Entity Details | | | | | | | |
|---|---|------------------------|---------------------------|-----------------|--|------------------|--|
| Limited Liability Company Name | PACIFIC SUNWEAR OF CALIFORNIA, LLC | | | | | | |
| Entity No. | 201625610185 | | | | | | |
| Formed In | CALIFORNIA | | | | | | |
| Street Address of Principal Office of LLC | | | | | | | |
| Principal Address | 3450 E MIRALOMA AVE ANAHEIM, CA 92806 | | | | | | |
| Mailing Address of LLC | | | | | | | |
| Mailing Address | 3450 E MIRALOMA AVE ANAHEIM, CA 92806 | | | | | | |
| Attention | | | | | | | |
| Street Address of California Office of LLC | | | | | | | |
| Street Address of California Office | None | | | | | | |
| Manager(s) or Member(s) | | | | | | | |
| <table><thead><tr><th>Manager or Member Name</th><th>Manager or Member Address</th></tr></thead><tbody><tr><td>■ Michael Miles</td><td>3450 E MIRALOMA AVE ANAHEIM, CA 92806</td></tr><tr><td>+ Brieanne Olson</td><td>3450 E MIRALOMA AVE ANAHEIM, CA 92806</td></tr></tbody></table> | | Manager or Member Name | Manager or Member Address | ■ Michael Miles | 3450 E MIRALOMA AVE ANAHEIM, CA 92806 | + Brieanne Olson | 3450 E MIRALOMA AVE ANAHEIM, CA 92806 |
| Manager or Member Name | Manager or Member Address | | | | | | |
| ■ Michael Miles | 3450 E MIRALOMA AVE ANAHEIM, CA 92806 | | | | | | |
| + Brieanne Olson | 3450 E MIRALOMA AVE ANAHEIM, CA 92806 | | | | | | |
| Agent for Service of Process | | | | | | | |
| California Registered Corporate Agent (1505) | C T CORPORATION SYSTEM Registered Corporate 1505 Agent | | | | | | |
| Type of Business | | | | | | | |
| Type of Business | Clothing stores (men's, women's) | | | | | | |
| Email Notifications | | | | | | | |
| Opt-in Email Notifications | Yes, I opt-in to receive entity notifications via email. | | | | | | |
| Chief Executive Officer (CEO) | | | | | | | |
| <table><thead><tr><th>CEO Name</th><th>CEO Address</th></tr></thead><tbody></tbody></table> | | CEO Name | CEO Address | | | | |
| CEO Name | CEO Address | | | | | | |
| Labor Judgment | | | | | | | |
| No Manager or Member, as further defined by California Corporations Code section 17702.09(a)(8), has an outstanding final judgment issued by the Division of Labor Standards Enforcement or a court of law, for which no appeal is pending, for the violation of any wage order or provision of the Labor Code. | | | | | | | |
| Electronic Signature | | | | | | | |
| <input checked="" type="checkbox"/> By signing, I affirm under penalty of perjury that the information herein is true and correct and that I am authorized by California law to sign. | | | | | | | |
| Vaio Goulionis | 07/25/2024 | | | | | | |
| Signature | Date | | | | | | |